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California Regional Water Quality Control Board Central Valley Region

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Arnold
Schwarzenegger
Governor

16 September 2010

Marion Mahone
General Manager
Tsar Nicoulai Caviar, LLC
60 Dorman Avenue
San Francisco, CA 94124

CERTIFIED MAIL
7010 0290 0000 8536 4902

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2010-0541 FOR ASSESSMENT OF MANDATORY MINIMUM PENALTIES, TSAR NICOULAI CAVIAR, LLC, TSAR NICOULAI STURGEON FARM, WILTON, SACRAMENTO COUNTY

Enclosed is an Administrative Civil Liability Complaint (Complaint), issued pursuant to California Water Code (CWC) section 13385, for violations of Waste Discharge Requirements (WDRs) Order R5-2005-0080 (NPDES No. CA0085120) by Tsar Nicoulai Caviar, LLC. (Discharger) that occurred at its sturgeon farm. The Complaint charges the Discharger with civil liability in the amount of **twenty three thousand dollars (\$23,000)**, which represents the sum of accrued Mandatory Minimum Penalties from 1 January 2009 through 30 June 2010 (\$27,000) and takes into account credit for a previously submitted payment (\$4,000).

On 1 March 2010, the Executive Officer issued ACL Complaint R5-2010-0511 for MMPs for effluent limitation violations which occurred from 1 January 2009 through 31 December 2009. On 26 March 2010, the Discharger waived its right to a hearing within 90 days of issuance of the Complaint, and requested that it be allowed to pay its outstanding liability over the course of several months. On 23 April 2010, the Executive Officer agreed, but demanded that full payment of \$12,000 be received by the Board no later than 30 June 2010, or a subsequent ACL Complaint would be issued to collect the outstanding balance. The Discharger submitted a partial payment of \$4,000 by check dated 28 June 2010. However, despite repeated contacts by Board staff, the Discharger has not submitted the outstanding \$8,000. This Complaint rescinds ACLC R5-2010-0511, extends the period of record from 1 January 2009 through 30 June 2010, and accounts for the Discharger's payment of \$4,000.

The Discharger may:

- Pay the proposed administrative civil liability and waive its right to a hearing (Option #1 on the attached waiver form);
- Ask that the hearing be postponed to facilitate settlement discussions or for other reasons (Options #2 or #3 on the attached waiver form); or
- Contest the Complaint and/or enter into settlement discussions without signing the enclosed waiver.

California Environmental Protection Agency

If the Central Valley Water Board does not receive a signed waiver **by 15 October 2010**, a hearing will be scheduled for the **8/9/10 December 2010** Board meeting in Rancho Cordova. This hearing will be governed by the attached Hearing Procedure, which has been approved by the Board Chair for use in adjudicating matters such as this one. Any objections to the Hearing Procedure must be received by Alex Mayer, whose contact information is listed in the Hearing Procedure, by **5 p.m. on 27 September 2010**.

If the Discharger chooses to sign the waiver and pay the assessed civil liability, this will be considered a tentative settlement of the violations. The settlement will be considered final pending a 30-day comment period, starting from the date this Complaint is issued. Interested parties may comment on the proposed action during this period by submitting written comments to the Central Valley Water Board staff person listed below. Should the Central Valley Water Board receive new information or comments during this comment period, the Executive Officer may withdraw the complaint, return payment, and issue a new complaint. If the Central Valley Water Board does not hold a hearing on the matter, and if the terms of the final settlement are not significantly different from those proposed in the enclosed Complaint, then there will not be additional opportunities for public comment on the proposed settlement.

The Discharger has previously contacted the Central Valley Water Board's Prosecution Team to determine how it could avoid assessment of mandatory minimum penalties in the future, and has stated that the majority of its violations are due to high concentrations of iron in the groundwater that it uses as source water. Even if the Discharger's source water is high in iron, this does not provide an exemption to mandatory minimum penalties, as the Discharger must comply with the effluent concentrations prescribed in its NPDES Permit. However, the Central Valley Water Board's Prosecution Team is open to discussing possible compliance options, including options that would allow the Discharger to cease its NPDES discharge.

In order to conserve resources, this letter transmits paper copies of the documents to the Discharger only. Interested persons may download the documents from the Central Valley Water Board's Internet website at:

http://www.waterboards.ca.gov/centralvalley/tentative_orders/

Copies of these documents can also be obtained by contacting or visiting the Central Valley Water Board's office weekdays between 8:00 AM and 5:00 PM.

If you have any questions or comments regarding the Administrative Civil Liability Complaint, please contact Barry Hilton at (916) 464-4762 or bhilton@waterboards.ca.gov.

/s/

WENDY WYELS, Supervisor
Compliance and Enforcement Section

Enclosures: ACLC R5-2010-0541
Hearing Procedure
Hearing Waiver

cc w/o encl: see next page

cc w/o encl: Kenneth Greenberg, USEPA, Region 9, San Francisco
Reed Sato, Office of Enforcement, SWRCB, Sacramento
Ken Landau, Central Valley Water Board, Sacramento
Clay Rodgers, Central Valley Water Board Advisory Team, Fresno
Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento
David Coupe, Office of Chief Counsel, SWRCB, Sacramento
Alex Mayer, Office of Chief Counsel, SWRCB, Sacramento
Carol Oz, Department of Fish and Game, Region 2, Rancho Cordova
Sacramento County Environmental Health Management Department, Sacramento
Mr. Bill Jennings, California Sportfishing Protection Alliance, Stockton
Jae Kim, Tetra Tech, Fairfax, VA